



Office of the Attorney General
State of Texas

December 30, 1994

DAN MORALES
ATTORNEY GENERAL

Mr. Bill Masters
Port Director
Port of Beaumont Navigation District
of Jefferson County
P.O. Drawer 2297
Beaumont, Texas 77704

OR94-878

Dear Mr. Masters:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 28647.

The Port of Beaumont Navigation District of Jefferson County (the "navigation district") received a request for a copy of its contracts with PC Pfeiffer & Company, Inc. ("Pfeiffer"), with Flanagan Stevedores, and with any other terminal operator. You say the navigation district has no agreements with any terminal operators other than those with Pfeiffer and Flanagan Stevedores. You say the navigation district has released both its contract with Flanagan Stevedores and its contract with Pfeiffer. However, the navigation district seeks to withhold the rate data contained in exhibit A to the Pfeiffer contract based on sections 552.101, 552.104, and 552.110 of the Government Code.

We notified Pfeiffer of this open records request. Pfeiffer asserts that the requested rate information is excepted from required public disclosure under sections 552.101, 552.104, and 552.110 of the Government Code.

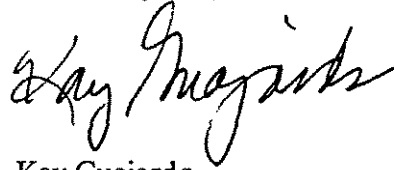
Section 552.104 excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." This exception protects the interest of a governmental body in situations such as competitive bidding and requests for proposals in which the governmental body may wish to withhold information to obtain more favorable offers. See Open Records Decision No. 592 (1991). Section 552.104 assures that the bidding process will be truly competitive by preventing the release of information that would give one competitor or bidder an unfair advantage over others. See Open Records Decision No. 541 (1990).

You inform us that the navigation district is currently reviewing its contractual arrangements for providing loading and unloading services, and will be soliciting requests for proposals for such services. You assert that disclosure of the rate information would adversely affect the navigation district's ability to secure the most favorable proposals. You explain that the disclosure of the rate information would allow parties interested in submitting proposals to estimate the differential between the rates the navigation charges to its customers, and the rates paid by the navigation district under its current loading and unloading contract. You say such disclosure would allow competitors to accurately estimate and thereby undercut future bids.

We believe that the navigation district has established that the release of the rate information would give an advantage to competitors for the future contract to provide loading and unloading services. *See id.* We, therefore, conclude that the navigation district may withhold the rate information based on section 552.104 of the Government Code.¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Government Section

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Ref.: ID# 28647

Enclosures: Submitted documents

¹In light of our conclusion under section 552.104 of the Government Code, we need not address your claims under sections 552.101 and 552.110 of the Government Code.

cc: Mr. Hubert Oxford III
Benckenstein & Oxford, L.L.P.
P.O. Drawer 150
Beaumont, Texas 77704
(w/o enclosures)